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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,122	12/21/2001	Jakobus Middeljans	PHNL 000755	3210

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EXAMINER

NELSON, FREDA ANN

ART UNIT PAPER NUMBER

3639

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/028,122

Applicant(s)

MIDDELJANS ET AL.

Examiner

Freda A. Nelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is in response to the communication filed on May 17, 2004 wherein:

Claims 1-12 and 14-16 are currently pending;

Claims 1-4, 6, 10-12 and 15-16 have been amended;

Claim 13 has been canceled; and

No claims have been added.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-12 and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. As for claim 1 a), the examiner is unable to determine what the applicant is claiming in the following language:  
  
"a set of negotiation steps". It is not clear the number of steps involved nor what the steps entail.
3. As for claim 1 b), the examiner is unable to determine what the applicant is claiming by the term "small" which is a relative term as well as being indefinite; and the recitation "some period of time" is indefinite.

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4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim language is directed to an apparatus. However, it appears that the applicant is claiming a computer program on a readable medium; and the examiner is unable to determine what the applicant is claiming in the following recitation "transmission entity".

5. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim language is directed to an apparatus. However, it appears that the applicant is claiming a method.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 15 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The applicant is claiming a "transmission entity" without the structural elements needed to realize the transmission entity's functionality.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stefik et al. (Patent Number 6,236,971) in view of Griswold (Patent Number 5,940,504).

In claims 1-2 and 4, Stefik et al. disclose that FIG. 19 is a state diagram of server and client repositories in accordance with a transport protocol followed when moving a digital work from the server to the client repositories (col. 5, lines 44-48). Stefik et al. further disclose that the server enters a data transmit state 1906 and transmits a block of data 1907 and then enters a wait for acknowledgement state 1908; and as the data is received, the requesters enters a data receive state 1909 and when the data blocks is completely received it enters an acknowledgement state 1910 and transmits an Acknowledgement message 1911 to the server (col. 32, line 66 through col. 33, line 5). Stefik et al. still further disclose that if there are more blocks to send, the server waits until receiving an Acknowledgement message from the requester and when an Acknowledgement message is received it sends the next block to the requester and again waits for Acknowledgement wherein the requester also repeats the same cycle of states (col. 33, lines 6-11). Stefik et al. still further disclose that Two-phase commit works as follows: the server sends all of the data to the requester and both repositories mark the transaction (and appropriate files) as uncommitted; the server sends a ready-to-commit message to the requester; the requester sends back an acknowledgement; the server then commits and sends the requester a commit message; and when the requester receives the commit message, it commits the file (col. 56-64).

Stefik et al. does not disclose accumulation of payment tokens received from the client in a pay-for-each-packet-received-as-acknowledged-by-the-client mode of operation. Griswold discloses that a licensed product generates a request datagram after each period of product use and the number of request datagrams received by the licensor can be used to bill the licensee, for example, if datagrams are sent after every hour of product use, the licensee will be billed for the amount equal to the number of request datagrams received by the licensor multiplied by the hourly rate (col. 4, lines 37-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Stefik et al. to include the feature of

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Griswold in order to permit the user to pay for the digital work(s) once all transmissions are complete rather than at the end of each transmission.

In claim 3, Stefik et al. disclose that FIG. 19 is a state diagram showing steps in the process of transmitting information during a transaction wherein each box represents a state of a repository in either the server mode (above the central dotted line 1901) or in the requester mode (below the dotted line 1901); and solid arrows stand for transitions between states (col. 32, lines 48-53). Stefik et al. further disclose that in FIG. 19, the server is initially in a state 1902 where a new transaction is initiated via start message 1903; this message includes transaction information including a transaction identifier and a count of the blocks of data to be transferred; and the requester, initially in a wait state 1904 then enters a data wait state 1905 (col. 32, lines 60-65).

In claims 5 and 16, Stefik et al. disclose that the transmission of digital works over networks is commonplace wherein one such widely used network is the Internet; and the Internet is a widespread network facility by which computer users in many universities, corporations and government entities communicate and trade ideas and information (col. 1, lines 49-54).

In claim 6, Stefik et al. disclose that the grammar differentiates between uses where the charge is per use from those where it is metered by the time unit; and transactions can support fees that the user pays for using a digital work as well as incentives paid by the right grantor to users to induce them to use or distribute the digital work (col. 23, lines 38-43). Stefik et al. further disclose Grammar element 1521 "Metered-Rate-Spec: =Metered: Money-Unit Per: Time-Spec" defines a metered-rate fee paid according to how long the right is exercised which is the time it takes to complete the transaction determines the fee (col. 23, lines 15-18).

In claims 7-9, Stefik et al. disclose that the server could use an additional level of encryption when transmitting a work to a client wherein only after the client sends a message acknowledging receipt does it send the key; and the client then agrees to pay for the digital work in order to provide a clear audit trail that the client received the work (col. 34, lines 6-12). Stefik et al. still further disclose that in another embodiment, the credit server acts as a "debit card" where transactions occur in "real-time" against a user account (col. 17, lines 20-22).

In claim 10-12, Stefik et al. discloses that the processor memory 1202 would typically be further comprised of Read Only Memories (ROM) and Random Access Memories (RAM) wherein such memories would contain the software instructions utilized by the processor element 1201 in performing the functions of the repository (col. 14, lines 25; FIG. 12).

In claims 14-15, Stefik et al. discloses that the external interface means 1206 provides for the signal connection to other repositories and to a credit server wherein the external interface means 1206 provides for the exchange of signals via such standard interfaces such as RS-232 or Personal Computer Manufacturers Card Industry Association (PCMCIA) standards, or FDDI; and the external interface means 1206 may also provide network connectivity (col. 14, lines 43-48).

### ***Conclusion***

8. The examiner has cited prior art of interest, for example:

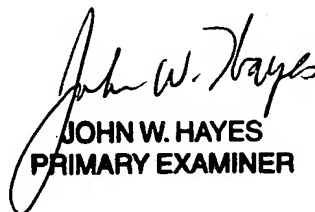
- 1) Gliner et al. (Patent Number 6,427,140), which disclose systems and methods for secure transaction management and electronic rights protection.
- 2) Patterson (Patent Number 6,389,541), which discloses regulating access to digital content.
- 3) Richards (Patent Number 6,069,957), which discloses a method and apparatus for providing hierarchical key system in restricted-access television system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 08/22/2005

Handwritten signature of Nedra Nelson in cursive script.Handwritten signature of John W. Hayes in cursive script, with the printed name and title below it.

**JOHN W. HAYES**  
**PRIMARY EXAMINER**